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ABSTRACT

This monograph is intended to serve as a practical resource for student affairs administrators, mental health professionals, campus attorneys, and others involved in formulating and implementing policies and procedures related to the dismissal of college and university students with mental disorders. One section covers legal issues surrounding Section 504 of the Rehabilitation Act of 1973 what it does and does not prohibit and due process. The basic elements of a psychiatric withdrawal policy are outlined; these include a clear statement of policy, adequate advance notice, reliance upon independent psychiatric evaluation, review by campus administration, informal review by student, legal counsel during proceedings, and a statement of reasons for the decision. There is also discussion of other policy considerations, such as the limitations of psychiatric evaluations and appropriate decision criteria. A checklist for responding to students with mental disorders is included. Appended is a case study of a student and a list of related cases. (Contains 40 references.) (CH)

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THE PUBLICATION SERIES

The Dismissal of Students with Mental Disorders

GARY PAVELA

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Table of Contents

Foreword	1
Introduction	1
I. Legal Issues	2
II. Developing a Suitable Psychiatric Withdrawal Policy	8
III. Policy Considerations	10
Checklist: Responding to Students with Mental Disorders	15
Case Study: Baxter and His History Professor, Part II	19
References	25
List of Cases	27

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The Dismissal of Students with Mental Disorders

Foreword

Few problems encountered by college and university administrators can be as difficult as determining an appropriate response to disruptive or self-destructive students with mental disorders. Problems of this nature will almost certainly be compounded in the coming decades, as increasing numbers of students experience the emotional and psychological stresses associated with the decline of the traditional family (see, generally, Klagsbrun, 1989; American Psychiatric Association, 1986). Accordingly, this monograph is designed to serve as a practical resource for student affairs administrators, mental health professionals, campus attorneys, and other officials involved in formulating and implementing pertinent policies and procedures specifically related to the dismissal of students with mental disorders.

Much of what follows is derived from a longer monograph by the same author: *The Dismissal of Students with Mental Disorders*, published by College Administration Publications in Asheville, North Carolina. An additional resource is *Synthesis: Law and Policy in Higher Education*, also published by College Administration Publications. Volume one, number 5 (November, 1989) is devoted to the topic of students with mental disorders.

Introduction

During the past decade, dozens of colleges and universities formulated psychiatric or mandatory "medical" withdrawal policies. For example, an "administrative withdrawal" procedure at a public college in the midwest provided that a student could be summarily removed from campus "for reasons of mental or emotional health" if the student's actions, behavior "or state of mind" so "recommend." A public college on the East Coast developed a policy mandating that a student suffering from a "disturbance" might be dismissed if "he/she cannot benefit from the available services of [campus] therapeutic agencies." In the Mid-Atlantic states, a public college permitted administrators to withdraw students

"in those cases where counseling and evaluation require it to be the proper action." In the case of the latter institution, the following standardized letter was developed to inform students that they were to be withdrawn on "medical" grounds:

> We regret that the effect of your present health condition upon you as a person and upon the college community requires that you receive immediate medical attention during which time you will be placed on medical leave of absence. You are hereby withdrawn. . . . This action is supported by the professional judgment of appropriate college officials and is in your best interest at this time.

These policies, and others elsewhere, were often developed by mental health professionals or student affairs administrators as alternatives to the traditional disciplinary process, or as a means to remove either mentally ill students who were unable to meet academic requirements, or students who threatened or attempted to commit suicide.

However well-intended these polices are, they nevertheless generally accord little if any procedural protection to those students who may be forced to interrupt their education and to endure the various stigmas associated with a finding of some sort of mental disorder. Furthermore, campus administrators should be cognizant of the danger of misusing similarly-worded policies at their own institutions in an effort to remove students who are simply perceived as "troublesome" or eccentric.

Even in instances where apparent violations of student conduct regulations have occurred, the tendency to resort to psychiatric withdrawals denies to students individually and to the campus as a whole the important benefits and protections associated with formal disciplinary action.

I. Legal Issues

Section 504 of The Rehabilitation Act of 1973

One of the most likely ways to challenge a mandatory psychiatric withdrawal policy is to claim that it does not adequately reflect the requirements of Section 504 of the federal Rehabilitation Act of 1973, as amended. Section 504 provides, in part:

> No otherwise qualified handicapped individual . . . shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under

any program or activity receiving Federal financial assistance. . . .

Title 29, section 706 [8] [B] of the U.S. Code defines a "handicapped" individual as "any person who (i) has a physical *or mental* impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment" (emphasis supplied). The words "physical or mental impairment" have been defined in the Department of Health and Human Services regulation to include "any mental or psychological disorder" such as "emotional or mental illness" (45 C.F.R. 84.3 [j] [2] [i] [B], 1988). Drug addiction and alcoholism for example are also considered "physical or mental impairments."

Relevant portions of Section 504 and related regulations have generally been interpreted to favor colleges and universities. It is therefore useful at this point to review several of these interpretations in order to better understand the precise ways in which the Act may affect psychiatric withdrawal policies comparable to those cited in the introduction.

What Section 504 Does Not Prohibit

The inclusion of "mental and psychological disorders" within the coverage of the Rehabilitation Act does not necessarily mean that a college or university receiving federal funds must ignore or excuse the behavioral manifestations resulting from such disorders. In 1977, before final interpretative regulations were issued, the United States Attorney General released a formal opinion pertaining to Section 504 which affirmed that "[a] person's behavioral manifestations of a disability may . . . be such that his . . . participation would be unduly disruptive to others, and Section 504 presumably would not require unrealistic accommodations in such a situation" (43 Op. Atty. Gen. No. 12, 1977, p. 2).

A similar conclusion was reached by the then Department of Health, Education and Welfare which advised, in an "Analysis of Regulation," that a recipient institution may hold a drug addict or an alcoholic (or, presumably, any person suffering from a comparable mental impairment) "to the same standard of performance or behavior to which it holds others, even if any unsatisfactory performance or behavior is related to" the person's mental impairment (45 C.F.R. 84, 1988, App. A, at p. 375).

According to the HEW analysis, the statute and regulations were designed to protect the rights of a handicapped student at a recipient institution of higher education only "if the person can successfully participate in the education program and complies with the rules of the college, and if his or her behavior does not impede the performance of other students" (45 C.F.R. 84, 1988, App. A at p. 376).

A number of judicial decisions have further restricted the potential coverage of Section 504. One of the most important is the opinion of the United States Supreme Court in *Southeastern Community College v. Davis* (1979). Holding that the refusal of an educational institution to admit an individual with a serious hearing impairment did not constitute a violation of Section 504, the Court rejected the argument that the Act required recipient educational institutions "to make substantial modifications in their programs to allow disabled persons to participate." In short, the Court held that a "qualified handicapped individual," as defined by the statute, "is one who is able to meet all of a program's requirements *in spite of* his handicap." (Emphasis supplied.)

In another important case, this one involving a student with a mental disorder (*Doe v. New York University* (1981)), the United States Court of Appeals for the Second Circuit held that a medical student who suffered from serious psychiatric problems, including self-destructive behavior, should be classified as a handicapped person under Section 504. However, the court also determined that the student had failed to show "that despite her handicap she is qualified" for admission to the New York University Medical School. The "crucial question" was "the substantiality of the risk that [Doe's] mental disturbances will recur, resulting in behavior harmful to herself and others." The court held that there was a "significant risk" of such recurrence and, even if the risk was simply "appreciable," that factor "could properly be taken into account in deciding whether among qualified applicants, it rendered [Doe] less qualified than others for the limited number of spaces available." The court furthermore observed that although Section 504 "requires us rather than the institution to make the final determination of whether a handicapped individual is 'otherwise qualified' . . . considerable judicial deference must be paid to the evaluation made by the institution itself . . ." (*Doe*, 1981, p. 776–779).

The holding by the Court of Appeals in *Doe* may be limited by the fact that Doe was found to have a "serious" mental disorder likely to "continue through most of . . . her adult life" (p. 768). Also, the case may not be fully applicable to undergraduate education, since the court concluded that there were "exceptional stresses" associated with medical training (p. 778). A person suffering from a mental disorder similar to Doe's might be capable of meeting institutional requirements in other academic programs, including other graduate education programs (p. 778). Nonetheless, the case does reinforce an interpretation of Section 504 that allows a recipient institution to take into account the likely recurrence of harmful behavior by a person suffering from a mental disorder.

Doe, Southeastern Community College, the HEW analysis, and the cited 1977 Attorney General's opinion all demonstrate that Section 504, by itself, does not necessarily preclude the psychiatric withdrawal or exclusion of students with serious mental disorders from institutions of higher education. Furthermore, it is clear, at least in the Second Circuit, that the courts will give considerable deference to relevant evaluations or determinations made by college or university officials.

What Section 504 Does Prohibit

Every relevant interpretation of Section 504 distinguishes between a simple diagnosis of a mental disorder and the behavior resulting from such a disorder. The latter, if it indicates that the student cannot meet reasonable institutional standards, might be sufficient grounds for exclusion. However, according to Section 504, it would not be lawful to exclude a student:

1. Simply because the student was suffering from a mental disorder, or had a mental disorder in the past.
2. Because it was assumed, without sufficient supporting evidence, that a student would be unable to meet reasonable institutional standards simply because the student was suffering from a particular mental disorder.
3. Because, out of paternalistic concern, it was hoped that a student suffering from a mental disorder (who nonetheless, continued to meet reasonable academic or conduct standards) would obtain treatment elsewhere.

Due Process

For years commentators criticized the standards for student conduct encountered at many campuses across the country as being overbroad, vague, and confusing (e.g. the famous "not a typical Syracuse girl" expulsion in *Anthony v. Syracuse University*, 1928). Many institutions began to discard such standards in the 1960's, realizing perhaps that students should not be subject to arbitrary dismissals, based upon regulations or standards which did not state precisely what was or was not acceptable behavior.

With the possible exception of recent "racial harassment" guidelines developed at some campuses (see Pavela, 1989), most college and university disciplinary rules today are being written with greater specificity. Nonetheless, some campuses have chosen instead to adopt psychiatric withdrawal policies that are throwbacks to student conduct regulations from the turn of the century. Now, instead of being expelled for "conduct prejudicial to the school" (see *Dixon v. Alabama* 1961), students are "withdrawn" because their "state of mind" so "recommends," or because their "mental health" renders them "undesirable." The end result, of course, is that students with psychiatric problems may be stigmatized and dismissed using standards which are subject to arbitrary and discriminatory application.

The most dangerous misuse of any broadly-worded psychiatric withdrawal policy is to dismiss socially or politically "eccentric" students who have not otherwise engaged in behavior which poses a danger to themselves or to others, or which substantially disrupts normal university activities. It was precisely this danger (in the context of overbroad disciplinary regulations) that prompted Professor Charles Alan Wright to write: "[i]f the institution is no longer free to discipline a student because he peacefully expresses unpopular political views, how easy it would be to proceed against him indirectly on the ground that an unkempt appearance or bizarre clothes violated the interdictions about 'good taste' and 'proper conduct' (*Vanderbilt Law Review*, 1969, p. 1064–65).

For all institutions, but at public institutions in particular, the courts have been generally unwilling to tolerate the type of abuse feared by Professor Wright. For example, in *Shamloo v. Mississippi Board of Trustees of Institutions of*

Higher Learning (1980), the Court of Appeals for the Fifth Circuit declared that a university regulation authorizing only "wholesome" demonstrations was unconstitutionally vague. The Court furthermore observed that any institutional regulation "is unconstitutionally vague if people of common intelligence must guess at its meaning and differ as to its application . . . .The regulation must not be designed so that different officials could attach different meanings to the words in an arbitrary and discriminatory manner" (p. 523–524). (For a similar holding but in the context of campus "racial harassment" regulations, see *Doe v. University of Michigan*, 1989.) The broadly-worded psychiatric withdrawal policies found on many campuses today are clearly deficient under this standard, as they tend to contain malleable language which could be used to arbitrarily withdraw (or otherwise stigmatize as "mentally ill") even those students who generally are considered to be among the most thoughtful, intelligent and socially-committed at the institution.

In addition to reviewing the substantive content of any psychiatric withdrawal policy, courts also consider the procedural protections accorded to students subject to withdrawal. At many institutions, a student may simply be withdrawn by a campus psychologist or psychiatrist, or by a student affairs administrator acting upon a recommendation from a mental health professional (Rickard, Steele, and Johnson, 1982). The student usually is not allowed to challenge the evaluation which resulted in his or her removal (including any underlying factual accounts or assumptions which influenced it), submit an independent psychiatric assessment, or even be informed of the precise nature of the "diagnosis" in question.

Policies of this nature are legally questionable. More than one court has indicated a willingness to impose significant due process requirements in cases involving psychiatric labeling and dismissal of students and teachers at public secondary schools and at public institutions of higher education (*Lombard v. Board of Education*, 1974; *Evans v. W. Va. Board of Regents*, 1980).

Although it is increasingly likely that some form of a "due process" proceeding will be necessary before a public college can require a student to withdraw from the institution on psychiatric grounds, the traditional contested hearing model

may not necessarily be the most effective and efficient way to accord justice. The primary defect of trial-type due process hearings is that they either create or intensify adversarial relationships among individuals who perceive themselves as belonging to a unique academic community. As a result, the more "legalistic" a respondent becomes or appears, the greater will be the threat which he or she is perceived to pose to the fundamental values of the institution. Whether the final decision is made by a student or faculty panel, or by an administrator, those vested with the authority to resolve disputed cases will likely be distrustful of individuals who seek to turn campus administrative proceedings into the functional equivalent of a criminal trial.

II. Developing a Suitable Psychiatric Withdrawal Policy

Many campuses have found it unnecessary to develop a formal psychiatric withdrawal policy (see the ensuing discussion in Part II "Policy Considerations"). Nonetheless, for those that have determined otherwise, it is indeed possible to conceive of legally-acceptable alternatives to the trial-type model, which would be better suited to the academic community and which would offer more protection to those students subject to involuntary psychiatric withdrawal.

A suitable policy might consist of the following basic elements:

1. A clear statement of policy pertaining to psychiatric withdrawal (based upon the American Psychiatric Association Diagnostic Manual), requiring proof that the student has engaged, or threatened to engage, in behavior that indicates he or she poses a threat to him- or herself or to others, or is unable to meet reasonable institutional standards. Such a statement might read as follows:

   > A student will be subject to mandatory psychiatric withdrawal if [the decision-maker] concludes, by clear and convincing evidence, that the student is suffering from a mental disorder, as defined by the current American Psychiatric Association Diagnostic Manual or its equivalent, and, as a result of the mental disorder, engages, or threatens to engage, in behavior which (a) poses a significant danger of causing imminent physical harm to the student or to others, or (b) directly and substantially impedes the lawful activities of other members of the campus community.

2. Adequate advance notice to the student that he or she may be subject to mandatory psychiatric withdrawal from the institution. The advance notice requirement may not be necessary in an emergency, if the policy is written as follows:

> An interim psychiatric withdrawal may be implemented immediately [by the appropriate administrator] if [the administrator] determines that the student may be suffering from a mental disorder and the student's behavior poses a significant danger of causing imminent physical harm to the student or to others, or of directly and substantially impeding the lawful activities of other members of the campus community. A student withdrawn on an interim basis shall be given an opportunity to appear personally before [the administrator] or a designee within 36 hours from the effective date of the interim withdrawal, in order to discuss the following issues only: (a) the reliability of the information concerning the student's behavior; (b) whether or not the student's behavior poses a significant danger of causing imminent physical harm to self or others, or of directly and substantially impeding the lawful activities of other members of the campus community.

3. Reliance, whenever possible, upon an independent psychiatric evaluation prepared by a mental health professional not affiliated with the institution. The school could require such evaluation for good cause if a policy statement such as the following were in place:

> The [appropriate administrator] may refer a student to [the mental health professional] for evaluation if [the administrator] reasonably believes that the student may be suffering from a mental disorder, and has engaged, or threatened to engage, in behavior which: (a) poses a significant danger of causing imminent physical harm to the student or to others, or (b) directly and substantially impedes the lawful activities of other members of the campus community.
>
> A student who does not complete the evaluation may be withdrawn pursuant to campus procedures for interim psychiatric withdrawal, or be subject to disciplinary action, including suspension or expulsion from the [institution].

4. Review by a campus administrative officer of any evaluation relied upon to support a psychiatric withdrawal recommendation.

5. An opportunity for the student to examine the psychiatric evaluation and to discuss it in an informal proceeding with the campus administrative officer before any final determination is made. The student might be assisted by a

family member, and by a mental health professional of his or her choice.

6. Instead of legal counsel defending the student, a tenured faculty member from an appropriate discipline might be assigned to interview the student, and to appear at the proceeding on his or her behalf for the express purpose of questioning and challenging the psychiatric withdrawal recommendation. The faculty member should not be considered the student's "representative," but rather an advocate for the institution's interest in avoiding an erroneous determination. This approach has the potential of promoting a carefully-reasoned and equitable outcome, without creating a needlessly-adversarial relationship.
7. A statement of reasons for any decision requiring a student to withdraw from school on psychiatric grounds.

III. Policy Considerations

The fact that a properly-drafted psychiatric withdrawal policy might withstand legal challenge does not in itself justify the necessity, or prudence, of requiring students to withdraw from school on psychiatric grounds. A better approach would be to rely on campus disciplinary regulations, or state psychiatric commitment procedures. Nevertheless, if a college or university does develop a psychiatric withdrawal policy, it should use it with extreme care, and only when no other reasonable alternatives are available.

The Limitations of Psychiatric Evaluation

Many psychiatric withdrawal policies contain broad language designed to remove students experiencing "emotional problems" who might "represent a threat to themselves or to others." Campus administrators often expect school psychiatrists and psychologists to determine which students experiencing "emotional problems" will engage in violent behavior. Unfortunately, such an expectation burdens mental health professionals with responsibilities that cannot be met, and may be readily abused.

The notion that psychiatrists and psychologists are somehow able to make long-term predictions about future violent behavior (especially in the absence of a verbalized threat or a pattern of violence in the past), reflects a naive confidence in psychiatry and psychology which is not supported by the professional literature (Cocozza and

Steadman, 1978; Kahle and Sales, 1978; Diamond, 1974). The American Psychiatric Association has sought to correct such a misconception, and has stated that attempting to predict such behavior is, at best, "an extremely inaccurate process" (American Psychiatric Association, 1984, p. 24). An American Psychological Association Task Force (1978) reached a similar conclusion, and reported that "the validity of psychological predictions of dangerous behavior . . . is extremely poor, so poor that one could oppose their use on the strictly empirical grounds that psychologists are not professionally-competent to make such judgments" (p. 30).

The Benefits of Discipline

Since the psychiatric withdrawal of a student, based solely on a finding that the student was suffering from a mental disorder, is precluded by Section 504 of the Rehabilitation Act of 1973, the focus of inquiry in any psychiatric withdrawal proceeding must therefore be on specific, usually prohibited, behavior which indicates that the student poses a physical threat to him- or herself or to others, or that he or she is otherwise unable to meet reasonable institutional standards. With very few exceptions, such as threatened or attempted suicide, these are the very forms of behavior which campus disciplinary systems should be designed to address.

Campus administrators tend to rely on psychiatric withdrawal policies in large part because their student disciplinary systems have become cumbersome, slow, and ineffective. It is often easier and less time-consuming to withdraw a student on psychiatric grounds than to go through the various stages of the disciplinary process. College and university attorneys, however, should remind their colleagues that court cases setting forth "due process" requirements never mandated the full-blown adversarial hearings now found at a number of institutions.

Lacking proper legal advice, some educational administrators have turned instinctively to the criminal justice model for guidance, and have developed extraordinarily complex judicial systems, requiring unanimous verdicts, multiple appeals, the "beyond a reasonable doubt" standard of proof, and the like. As a result, they face a greater risk of being sued for running afoul of their own regulations than they do for violating the simple standards of "basic fairness" which the judiciary requires.

Proceduralism in student disciplinary proceedings can be remedied by appropriate revisions to institutional regulations. It will also be important, however, to foster the understanding that the disciplinary process has a number of benefits both for accused students and the campus as a whole.

One of the most important benefits associated with the imposition of discipline on campus is that the language used to define prohibited conduct can also be relied upon to affirm a shared set of ethical standards. A psychiatric withdrawal, on the other hand, is phrased in terms of medical language, and is not designed to reflect a moral standard.

Likewise, one frequently overlooked attribute of the disciplinary process is that students accused of disciplinary violations may discuss with the decision-maker the underlying wisdom or fairness of a particular university regulation (Kirp, 1979). Students withdrawn on psychiatric grounds are not usually accorded the same opportunity.

Also, students subject to disciplinary sanctions can compare the nature of the infraction for which they are being held responsible with the punishment imposed, and thereby make an appeal to justice. Students withdrawn on psychiatric grounds, however, are often told that the action is being taken to help them, or to insure that they obtain longer-term therapy.

In short, the campus disciplinary process serves an important didactic function. A just punishment affirms to individual students, and to the community, that there is a difference between right and wrong, that certain basic ethical standards will be enforced, and that those who violate such standards should be held accountable for their behavior.

Appropriate Uses of a Psychiatric Withdrawal Policy

With rare exceptions, such as an anorexic student in immediate medical jeopardy, a student suffering from a mental disorder who does not violate the institution's reasonable standards of conduct might be referred to some form of counseling or therapy, but should not be withdrawn from school on psychiatric grounds. Although he or she might ultimately be dismissed for academic reasons, the stigma associated with that kind of dismissal is far less damaging than the

repercussions which might result from a psychiatric withdrawal.

The practical problem on most compuses, however, is not the passive student in need of psychiatric treatment. Instead, what seems to be of most concern to administrators is the student who is apparently suffering from a mental disorder, and who engages in behavior which significantly disrupts the academic process, or which threatens the physical safety of others.

As suggested in the preceding section, colleges and universities should rely on a properly drafted disciplinary code rather than a medical withdrawal policy to protect members of the campus community. There may be instances, however, when campus disciplinary committees would probably regard it as unjust to subject a student to disciplinary sanctions, even though the student engaged in prohibited behavior. For example, a student who was suffering from a mental disorder and, as a result, thought he was squeezing lemons while he was actually choking his roommate, would probably not be held fully accountable for his actions. Instead, most campus decision makers would want to rely on a psychiatric withdrawal policy rather than a disciplinary suspension or expulsion to remove him from campus.

Any decision to rely on a psychiatric withdrawal policy in lieu of disciplinary action should be guided by some articulated standard. Given the various benefits associated with the imposition of discipline and, assuming that it is "therapeutically desirable to treat behavior deviants as responsible for their conduct" (Robinson, 1970, p. 251; see also Gaylin, 1989), such a standard should be very narrowly defined. Essentially, a student suffering from a mental disorder who is accused of a disciplinary violation should not be diverted from the disciplinary process unless, as a result of the mental disorder, he:

1. Lacks the capacity to respond to the charges against him, or
2. Did not know the nature and quality of the act in question. (See American Psychiatric Association, 1983, p. 685: the insanity defense in criminal cases should be limited to those "severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable primarily to the

voluntary ingestion of alcohol or other psychoactive substances.")

Another possible use for a mandatory psychiatric withdrawal policy might be to remove suicidal students from campus. While it would be unwise to require the removal of all students who threatened to harm themselves, campus administrators may not be able to render ongoing assistance to suicidal students in every case, especially if the student has made a serious suicide attempt, and is suffering from a mental disorder which might be exacerbated by the academic environment. There would be no alternative under these circumstances but to withdraw the student, unless some sort of voluntary leave of absence could be arranged.

Conclusion

It is neither administratively sound nor legally sufficient to use vague and ambiguous labels (e.g., "disturbed," "behavior of concern to others," "abnormal") to remove a student from a college or university. Instead, if "medical" language must be used, it is best to use words which have at least some professionally-accepted meaning, such as the term "mental disorder," used in the current American Psychiatric Association Diagnostic Manual.

Furthermore, both good administrative practice and (at public institutions) current constitutional standards require some minimal due process protections before students are withdrawn on psychiatric grounds. Removal on the basis of a mental disorder alone may be precluded by Section 504 of the Rehabilitation Act of 1973, even with sufficient procedural due process.

Consequently, the focus of any student conduct inquiry must be on specific, usually prohibited, behavior. It is recommended, on policy grounds, that administrators rely on the institution's disciplinary process rather than any proscribed medical withdrawal process in response to incidents of prohibited behavior, unless a student lacks the capacity to respond to charges, or did not know the nature of the act in question.

Checklist: Responding to Students with Mental Disorders

- ☐ Are staff members, including resident advisors, offered any training on how to respond to students with apparent mental disorders? Are realistic case studies used? Are mental health professionals and law enforcement personnel encouraged to participate in the training program?
- ☐ Are professional counseling services available to students? Do students know such services are readily available? Are standards for confidentiality made clear in advance? Do students know that there may be limits to confidentiality? Have campus mental health professionals discussed the therapeutic importance of confidentiality with institutional administrators? Do those administrators know the risk of liability for an unlawful breach of confidentiality?
- ☐ Is campus policy pertaining to the Family Educational Rights and Privacy Act (FERPA) published in a student handbook or catalog? Do students have the right to review their own medical or psychological records? If not, do they know that FERPA requires that a physician or other appropriate professional of their choice must be allowed to do so?
- ☐ Has a campus crisis response team been created? Does it include mental health professionals, law enforcement personnel, and student affairs staff members? Do response team members meet on a regular basis to consider appropriate responses to a possible crisis (e.g. an attempted suicide)?
- ☐ Has a policy been formulated concerning notification to parents when a student has a mental health emergency? Do students and parents know what the policy is?
- ☐ Is there a voluntary withdrawal procedure for medical or mental health reasons? Are students informed about it?
- ☐ A mandatory medical withdrawal procedure may be unnecessary, especially if campus disciplinary procedures are properly written and effectively administered. Nonetheless, if a mandatory withdrawal procedure is developed, are students accorded basic due process pro-

tection? Are the standards for withdrawal clearly specified? Are they written so broadly that students could be withdrawn simply because they were eccentric, or expressed unpopular social or political views? Are students who are withdrawn on medical grounds simply dumped in the larger community, or are they assisted in finding appropriate treatment?

- ☐ Are standards established for diverting students with apparent mental disorders from the disciplinary process? Are the standards written with an understanding that most persons with mental disorders can and should be held accountable for their actions?
- ☐ Are clear standards established for classroom conduct? Are faculty members and students informed about what they are? What authority is given to faculty members to dismiss a disruptive student from a class? Are students given any due process protection? Do faculty members know what legal responsibilities they may have in that regard? Is it understood that the concept of academic freedom (e.g. the right, in a lawful manner, to express an honest difference of opinion in the classroom) applies to students as well as to faculty members?
- ☐ Have campus mental health professionals visited any local mental health facility where students might be subject to commitment for observation? If standards or conditions seem unsatisfactory, has any effort been made to work with local authorities to improve them? Have procedures for seeking voluntary or involuntary commitment been reviewed and discussed?
- ☐ Have federal (and, in some cases, state and local) standards relating to discrimination against the handicapped been reviewed with counsel, and explained to the campus community? Are appropriate grievance procedures in place? Is it understood that college students with mental disorders, or with a history of drug addiction, or alcoholism, may be protected against unlawful discrimination? Is it also understood that such students may be held accountable for unlawful or disruptive *behavior*, or for failing to meet other reasonable standards of conduct, or academic performance?

- ☐ Is a mandatory mental health withdrawal policy used as a substitute for an inadequate system of student discipline? Have campus disciplinary policies been reviewed with counsel with the express purpose of eliminating needlessly cumbersome procedures? Is it understood that due process in an educational setting does not require the complexity of a criminal trial? Are internal guidelines established to promote prompt resolution of cases? Do policy makers know that minor cases may be resolved in short conferences rather than protracted hearings?
- ☐ Is a procedure in place to suspend students on an interim basis if they engage in behavior that threatens the physical safety of others, or results in substantial disruption? Do faculty members and staff members understand that the disciplinary process can be used promptly and effectively when students engage in such behavior? Are they encouraged to report cases promptly, so that disciplinarians will be aware of any patterns of misbehavior?
- ☐ Is a suicide prevention program in place? Are students active participants in it? Are they advised about ways in which they can assist each other, including making appropriate referrals to a counseling service?
- ☐ How will the institution respond if a suicide does occur on or off-campus? Who is responsible for contacting parents? Who is responsible for responding to media inquiries? What actions will be taken to counsel or assist students and staff members after a suicide?

Case Study: Baxter and His History Professor, Part II[1]

Baxter is a contentious student at a private university who intimidates and infuriates his history professor. In addition to interrupting and challenging his professor's classroom observations ("that's another stupid statement, professor"), Baxter laughs inappropriately in class, stands up and wanders about the room in the middle of lectures, and frequently wears an offensive T-shirt that contains the expression "Another Mind Destroyed by History Professors."

One of Baxter's most intimidating activities involved following his history professor about the campus, making unflattering remarks about the professor's clothing, as well as the professor's embarrassingly obvious toupee. This behavior culminated in a shouting match between Baxter and the professor outside the professor's home, which was located several blocks from the University. Baxter threatened to assault the professor, and stated that the threat was to be taken seriously, since "every shrink I've talked to knows I'm crazy enough to do it."

The last incident prompted the professor to take action. He was able to arrange a meeting with the Dean of Students and the Director of the University Health Center. The professor stated that he had reason to believe Baxter was a patient at the campus mental health clinic. It was the professor's view that, as a potential victim, he was entitled to know the nature of Baxter's mental disorder. The professor also argued that Baxter should be subject to an immediate psychiatric withdrawal from the university. The professor was reluctant to involve himself in the disciplinary process, even though Baxter's off-campus misbehavior would be subject to disciplinary action, since he believed the incident outside his home would be seen by a disciplinary hearing board as simply "one person's word against another."

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1. The following case study has been revised and reprinted with permission from *Synthesis: Law and Policy in Higher Education* (Vol. I No. 5, November, 1989). It is a sequel to the original "Baxter and his History Professor," published in the College Administration Publications monograph *The Dismissal of Students with Mental Disorders*.

How should the Dean and the Director respond?

- Any threat of violence must be taken seriously. The professor should be asked to contact law enforcement authorities immediately. The Dean of Students should notify the campus police as well. In addition, the professor has the option of conferring with a private attorney and seeking a court order directing Baxter to refrain from any threats or acts of violence.
- Both public and private colleges may implement policies that prohibit certain forms of off-campus behavior. See the May 1989 issue of *Synthesis*, p. 29. For example, the George Washington University *Code of Student Conduct* provides that "[t]he University reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community. Such action may include taking disciplinary action against those students whose behavior off university premises indicates that they pose a . . . substantial danger to others."
- If institutional rules permit, the Dean should consider suspending Baxter on an interim basis. (See, generally, *Goss v. Lopez*, 1975.) An interim suspension is justified on the ground that Baxter's alleged threat to assault his professor indicates that he may pose a danger to other members of the campus community. Consideration could be given to an interim suspension that would allow Baxter to enter upon the campus only for certain specified purposes: e.g., psychiatric counseling, or taking examinations, pending resolution of his disciplinary case.
- Baxter should be offered an immediate preliminary hearing to review the need for an interim suspension. Such a preliminary hearing would be a constitutional due process requirement at a public institution. At a private university, it should be done as a matter of fairness (e.g. to preclude the possibility of mistaken identity), and because it might be interpreted to be part of an implied contract with students that they will not be treated arbitrarily. See, generally, *Johnson v. Lincoln Christian College*, 1986, p. 846; *Synthesis*, January, 1989, p. 4. More formal proceedings on the underlying disciplinary charge should be held promptly thereafter.

- The notice of interim suspension sent to Baxter might condition his return to campus upon completion of a psychiatric evaluation. The Dean can be given the responsibility of requiring such an evaluation, even though she is not a mental health professional. See the 1982 American Psychiatric Association Guidelines for Legislation on the Psychiatric Hospitalization of Adults (a police officer may take into custody and transport a person for psychiatric evaluation if the police officer "has probable cause to believe, based upon his personal observation and investigation, . . . that the person is suffering from a severe mental disorder, as a result of which he is likely to cause harm to himself or others or is manifestly unable to care for some of his basic needs. . . ." p. 673).
- A required psychiatric evaluation can be an invasion of privacy. It should not be undertaken lightly. Nonetheless, such a required evaluation will probably withstand legal challenge if there are reasonable grounds to suspect that the individual in question had a mental disorder, and that he or she posed a danger to self or others. See, generally, *Claim of Stickane*, 1986; *Crawford v. Charlotte-Mecklenburg Board of Education*, 1986; *Daury v. Smith*, 1988. Also, a psychiatric evaluation may be considered to have a "proper and privileged purpose" if it is motivated by a desire to help students with possible "personality problems" improve their academic performance. See *Moire v. Temple University*, 1985, p. 1376.
- It is important that Baxter be informed that the results of the psychiatric evaluation will be shared with the Dean of Students and other institutional officials involved in the resolution of his case. The evaluation should not be shared with Baxter's history professor, however. Pertinent advice is set forth in the 1988 American Psychiatric Association "Guidelines on Confidentiality:"

> Psychiatrists are often asked to evaluate an individual on behalf of a third party. . . . Care must be taken before proceeding with the evaluation to inform the individual of the need to make a report to the third party and of the limitations this places on confidentiality. The psychiatrist also has a responsibility to the individual to limit the material contained in the report to matters relevant to the purposes for which it has been requested, excluding any

extraneous material that the individual has disclosed in the course of the evaluation. The medical record should contain a notation that the individual has been advised that anything he says during the evaluation may be included in the report that the psychiatrist has to make (p. 5).

- There might be circumstances in which Baxter's history professor would be entitled to a warning that Baxter had expressed an intention to harm him (see Gehring, 1989). However, even if such a warning were required, the professor should not be given access to Baxter's complete psychiatric history or any subsequent psychiatric evaluation, since he has no decisionmaking responsibility in Baxter's case. Confidentiality in these matters is extremely important if mental health professionals are to be expected to make an accurate assessment of the individuals referred to them, or to have any prospects for success in a therapeutic relationship. The law recognizes this fact. Baxter should not (and probably could not) be required to release his psychiatric history or any psychiatric evaluation to his professor. In the absence of a valid release, disclosure to the professor might give Baxter a legal cause of action against the mental health professional who treated or evaluated him, the Director of the Health Center, *and the history professor himself*. See *Hammonds v. Aetna Casualty and Surety Company*, 1965 (". . . when one induces a doctor to divulge confidential information in violation of that doctor's legal responsibility to his patient, the third party may also be held liable in damages to the patient."). See also *Johnson v. Lincoln Christian College*, 1986.
- It is possible, of course, that Baxter may refuse to submit to a psychiatric evaluation, or refuse to release his psychiatric records to any university official. Under these circumstances, it might be prudent to continue to bar him from campus until his case is resolved in a disciplinary hearing. Having refused to release his records, or submit to an evaluation, Baxter should be precluded from raising the issue of any mental disorder in the hearing.
- If Baxter does submit to a psychiatric evaluation, or agree to permit a current diagnosis to be shared with the Dean of Students, the finding that he has a mental disorder does not mean that he should be diverted from the disciplinary process. Generally, Baxter should

be held accountable for his actions, unless they are the result of a mental disorder that "grossly and demonstrably" impairs his "perception or understanding of reality."

- Baxter's alleged pattern of following his professor about the campus, and subjecting him to public ridicule, as well as Baxter's active disruption of the classroom environment, would violate student disciplinary rules at most colleges and universities (e.g., standards related to "disorderly" or "disruptive" conduct). The professor should have consulted with the Dean of Students much earlier. Then, it might have been possible for the Dean to have established a behavioral contract with Baxter, and to have set limits upon his behavior. Also, the Dean might have been able to consult with the professor about any aspect of the *professor's* behavior that could have precipitated or exacerbated the problem. Finally, it might have been useful to have referred Baxter for appropriate psychiatric or psychological assistance (which might also alert any therapist currently treating Baxter that additional or different interventions were necessary). However, under the present circumstances, if Baxter is found responsible for threatening physical violence against a member of the university community, as well as disruptive or disorderly behavior on campus, it is likely that he will face the risk of suspension or expulsion.
- Not all of Baxter's classroom behavior should be subject to disciplinary action. At public institutions, his offensive T-shirt would probably constitute a form of protected speech. See the interview with Robert M. O'Neil, in the January 1989 issue of *Synthesis*, p. 8. For an argument that similar standards might be applied at private institutions, see the interview with William Kaplin on page 4 of the same issue. The George Washington University *Code of Student Conduct* contains pertinent language that might be considered at other institutions:

> The primary responsibility for managing the classroom environment rests with the faculty. Students who engage in any prohibited or unlawful acts that result in disruption of a class may be directed by the faculty member to leave the class for the remainder of the class period. Longer suspensions from a class, or dismissal on disciplinary grounds, must be preceded by a disciplinary conference or hearing [with a campus disciplinary officer].
>
> . . . [t]he term "prohibited . . . acts" would include behavior prohibited by the instructor (e.g. smoking

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in the classroom, persistently speaking without being called upon, refusing to be seated, disrupting the class by leaving and entering the room without authorization, etc.). It must be emphasized that this provision is not designed to be used as a means to punish classroom dissent. The lawful expression of a disagreement with the instructor is not in itself disruptive behavior.

- Processing Baxter's case through the disciplinary system will require the cooperation of his history professor. The professor needs to understand that campus disciplinary proceedings need not duplicate the worst aspects of a criminal trial. See, generally, Pavela, 1980, 1988. It will be especially important for the professor to be informed that an incident involving "one person's word against another" can and should be referred for resolution.

  Faculty and staff members are occasionally paralyzed by indecision if a factual dispute cannot be resolved with mathematical certainty. As a result, apparent violations of a wide variety of institutional regulations may go unreported, due to an assumption that more than one witness will be necessary.
  For example, see Grant, 1981:

  > A female teacher was still shaking as she told us about a group of students who had . . . made sexually degrading comments about her in the hall. When we asked why she did not report them, she responded, "well, it would not have done any good." Why not? we pressed. "I didn't have any witnesses," she replied. (p. 141, cited in D. Bok, 1983, p. 43).

It must be emphasized that it is possible to resolve a case even if two individuals give contradictory testimony about an issue in dispute. Members of the hearing panel should listen carefully, ask questions, consider the logical order and consistency of the testimony, evaluate the demeanor of the witnesses, and make a judgment.

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